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2013 IL App (3d) 120496-U

Order filed December 12, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 14th Judicial Circuit,
Plaintiff-Appellee,) Whiteside County, Illinois,
)
v.) Appeal No. 3-12-0496
) Circuit No. 10-CF-31
)
LAWRENCE WYRE,) Honorable
) Stanley B. Steines,
Defendant-Appellant.) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err when it refused to appoint new counsel to investigate defendant's claims of ineffective assistance of counsel. (2) The cause is remanded for proper Rule 605(c) admonishments. (3) Defendant was not entitled to vacatur of the \$733 public defender fee, because the trial court did not vacate the fee.

¶ 2 Defendant, Lawrence Wyre, pled guilty to unlawful delivery of a controlled substance within 1,000 feet of a park (720 ILCS 570/407(b)(1) (West 2010)). The trial court accepted the plea and sentenced defendant to 17 years in prison. Defendant filed a motion to vacate judgment

and withdraw his guilty plea, which was denied. After sentencing, defendant filed a motion to reconsider his request to vacate judgment and withdraw guilty plea, as well as a motion to reconsider sentence. Both motions were denied by the trial court. Defendant appeals, arguing that: (1) the trial court abused its discretion when it failed to appoint new counsel to independently investigate his postplea claims of ineffective assistance of counsel; (2) the cause should be remanded for further proceedings in compliance with Illinois Supreme Court Rules 605(c) and 604(d) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001); R. 604(d) (eff. July 1, 2006)); and (3) a \$733 public defender fee should be eliminated because it was vacated by the trial court. We affirm in part, reverse in part, and remand the cause for proceedings in compliance with Rules 605(c) and 604(d).

¶ 3

FACTS

¶ 4 Defendant was charged with two counts of unlawful delivery of a controlled substance (720 ILCS 570/407(b)(1), (b)(2) (West 2010)). The State alleged that defendant delivered more than 1 gram, but less than 15 grams, of cocaine within 1,000 feet of a park and less than 1 gram of cocaine within 1,000 feet of a church. A public defender was initially appointed to represent defendant. However, as the cause proceeded, defendant informed the court that he no longer wanted to be represented by the public defender and would find private counsel. The public defender was permitted to withdraw. The State moved for public defender fees. After making a finding that defendant could pay, the court assessed a public defender fee of \$733 against defendant on June 10, 2010.

¶ 5 On October 18, 2010, private counsel entered an appearance as defendant's attorney. On March 17, 2011, private counsel moved to withdraw as defendant's attorney, and the public

defender was reappointed.

¶ 6 On May 13, 2011, defendant entered a plea of guilty to unlawful delivery of a controlled substance within 1,000 feet of a park. In exchange, the State promised to cap its sentencing recommendation at 17 years. During the guilty plea hearing, defendant agreed that the State would prove at trial that Sterling police officers purchased 2.1 grams of a substance containing cocaine from defendant for \$200. The purchase was videorecorded and occurred 557 feet from Wallace Park in Sterling, Illinois. Further, the State would produce a taped interview during which defendant admitted that he had committed the delivery. During the guilty plea hearing, defendant informed the court that he understood the plea and that no one had pressured him into pleading guilty. The trial court accepted the plea and set the matter for sentencing.

¶ 7 After the plea was entered, defendant sent the court a letter. The letter stated that defendant wished to withdraw his plea because he had not committed the crime, and it alleged that counsel was ineffective for failing to review discovery with him. On June 16, 2011, the public defender filed a motion to vacate judgment and withdraw plea of guilty. Attached to the motion was a letter defendant sent to his attorney stating that he had not received or reviewed a digital video disc of the alleged drug transaction until after he had pled guilty, and that the video showed he did not commit the crime because he was asleep in the car. On August 25, 2011, defendant filed a *pro se* motion to vacate judgment and withdraw guilty plea alleging, among other things, ineffective assistance of counsel.

¶ 8 The trial court held a hearing on defendant's motion with regard to his claims of ineffective assistance of counsel. At the conclusion of the hearing, the court determined that defendant had not received ineffective assistance. Important in the court's determination was the

fact that defendant admitted on video to the commission of the crimes and that he had stated, during the plea hearing, that no one had forced him to plead guilty.

¶ 9 Even though defendant's motion was denied, a new public defender was assigned to represent him. The new public defender filed an amended motion to vacate judgment and withdraw plea of guilty. Counsel did not, however, file a Rule 604(d) certificate with his motion. The motion was denied by the trial court.

¶ 10 On January 4, 2012, the trial court held a sentencing hearing. At the conclusion of the hearing, defendant was sentenced to 17 years in prison. The court informed defendant that:

"Prior to taking an appeal, you must file in this court within 30 days of today's date a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw your plea of guilty setting forth the reasons in that written motion."

¶ 11 The State asked for additional public defender fees of \$1,633. After determining that defendant would not be able to pay these fees, the trial court denied the request. No mention was made of the public defender fees assessed against defendant on June 10, 2010.

¶ 12 Defense counsel filed a motion to reconsider the previously filed motion to vacate judgment and withdraw the plea, as well as a motion to reconsider sentence. Again, counsel did not file a Rule 604(d) certificate with either motion. Both motions were heard and denied by the trial court. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 I

¶ 15 Defendant first argues that the trial court abused its discretion when it refused to appoint

new counsel to independently investigate his postplea claims that defense counsel was ineffective. The Illinois Supreme Court has outlined the process trial courts must undertake when dealing with *pro se* claims of ineffective assistance of counsel. See *People v. Krankel*, 102 Ill. 2d 181 (1984). Although such claims can lead to the appointment of new counsel, there is no *per se* rule that new counsel must be appointed every time a defendant presents a *pro se* motion alleging ineffective assistance of counsel. *People v. Baltimore*, 292 Ill. App. 3d 159 (1997). Instead, a trial court must first conduct a preliminary investigation of the allegations, without the appointment of counsel, to examine the factual basis of the underlying claim. *People v. Allen*, 391 Ill. App. 3d 412 (2009). If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the motion. *People v. Tolefree*, 2011 IL App (1st) 100689.

¶ 16 Here, the trial court conducted an inquiry into defendant's allegations of ineffective assistance of counsel. Those allegations included defendant's contention that his attorney did not adequately review the discovery material with him. At the conclusion of its investigation, the court found that defendant's claims lacked merit. Specifically, the court noted that (1) the factual basis indicated that defendant admitted to police during a videotaped interview that he committed the crimes and (2) the record did not show defendant was forced into pleading guilty. Because the trial court made a determination regarding the merits of defendant's *pro se* allegations of ineffective assistance of counsel, we will reverse its decision only if it was manifestly erroneous. *Id.*

¶ 17 After our review of the record, we do not conclude that the court's determination was manifestly erroneous. The videotaped confession, as well as the fact that the record contradicts

defendant's claim that he was forced to plead guilty, sufficiently showed that defendant's claims lacked merit. Therefore, we decline defendant's request to remand the cause for the appointment of new counsel to independently investigate his *pro se* claims of ineffective assistance of counsel.

¶ 18

II

¶ 19 Defendant next contends that the cause should be remanded because the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

Defendant requests a remand for proper admonishments and, should defendant desire to take an appeal, the filing of a new postplea motion and Rule 604(d) certificate. The State agrees.

¶ 20 Rule 605(c) imposes certain requirements on the trial court upon entering a judgment and sentence on a negotiated plea of guilty. Relevant to this case, the rule requires the trial court to advise defendant that in order to preserve his right to appeal, defendant must file a written motion to have the judgment vacated and for leave to withdraw the guilty plea. In this case, the trial court told defendant that he could preserve his appeal rights by either filing a written motion asking the court to reconsider sentence or a motion to have the judgment vacated and for leave to withdraw his guilty plea. Because the court suggested that defendant could preserve his appeal rights by filing a motion to reconsider sentence, the court erred in its admonishments.

¶ 21 Our supreme court has held that Rule 605 admonishments are mandatory. See *People v. Jamison*, 181 Ill. 2d 24 (1998). Therefore, where, as here, the trial court fails to properly admonish a defendant pursuant to his appeal rights, the cause must be remanded. *Id.* We remand the cause for proper admonishments under Rule 605(c).

¶ 22 We further note that defense counsel failed to file the requisite Rule 604(d) certificate. On remand, should defendant desire to take an appeal, defense counsel should file this certificate

along with the appropriate postplea motion.

¶ 23

III

¶ 24 Finally, defendant contends that the trial court vacated a \$733 public defender fee it had previously imposed, and therefore the fee should be removed from the circuit clerk's list of assessments against defendant. After our review of the record, we conclude that the trial court never vacated the fee.

¶ 25 On June 10, 2010, during a preliminary hearing, defendant requested that the public defender be permitted to withdraw from the case. At the end of the hearing, the trial court found that defendant had the ability to reimburse the county for a reasonable fee of \$733 for the services the public defender had provided. On June 23, 2011, the public defender was reappointed to represent defendant. At the conclusion of the sentencing hearing, on January 4, 2012, the State moved for reimbursement of public defender fees of \$1,633. The fee was for services incurred after the public defender was reappointed. This time, the court found that defendant did not have the ability to reimburse the county and denied the motion. The court's ruling related only to the new motion for fees, and it did not concern the previous motion granted 1½ years prior. Therefore, we find no evidence to suggest that the court vacated the \$733 public defender fee issued on June 10, 2010.

¶ 26

CONCLUSION

¶ 27 The judgment of the circuit court of Whiteside County is affirmed in part and reversed in part, and the cause is remanded for further proceedings consistent with this order.

¶ 28 Affirmed in part and reversed in part; cause remanded with directions.